

Application/Control Number: 11/557,689
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DETAILED ACTION

Claims 1–12 are pending.

Election/Restrictions

Applicant's election of group I, claims 1–4 in the reply filed on 02/05/2009 is
5 acknowledged. Because applicant did not distinctly and specifically point out the supposed
errors in the restriction requirement, the election has been treated as an election without traverse
(MPEP § 818.03(a)).

Claims 5–12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as
being drawn to a nonelected invention, there being no allowable generic or linking claim.

10 Election was made **without** traverse in the reply filed on 02/05/2009.

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or
under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or
more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 and 119(e)
15 as follows:

This application is claiming the benefit of prior-filed nonprovisional application No.
09/397,846 under 35 U.S.C. 120, 121, or 365(c). Copendency between the current application
and the prior application is required. Since the applications are not copending, the benefit claim
to the prior-filed nonprovisional application is improper. Applicant is required to delete the
20 reference to the prior-filed application from the first sentence(s) of the specification, or the
application data sheet, depending on where the reference was originally submitted, unless
applicant can establish copendency between the applications.

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Applicants are claiming that this application is a CIP of 10/738,929, filed 12/16/2003, which is a CON of 09/397,846, filed 09/17/1999, which claims benefit of 60/100,706, filed 09/17/1998. However, the Office records indicate that nonprovisional application No.

09/397,846 became abandoned on 09/17/2003. Therefore, nonprovisional application No.

5 10/738,929, filed 12/16/2003, was not copending with 09/397,846. Therefore, the current application does not receive the benefit of the filing date of the 09/397,846 application.

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or

10 provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 60/100,706, fails to provide
15 adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Application No. 60/100,706, fails to provide adequate support in the manner provided by the first paragraph of 35 U.S.C. 112 for the limitation “at least 14 contiguous amino acid residues of SEQ ID NO: 24 or SEQ ID NO: 26” (claim 4).

20 ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action: